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SUBJECT: TRADE AND INVESTMENT CLIMATE STATEMENT, NIGERIA

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Overview

With an estimated population of 140 million, Nigeria is Africa's most populous nation. It offers investors a low-cost labor pool, abundant natural resources, and potentially the largest domestic market in sub-Saharan Africa. Unfortunately, much of that market potential is unrealized. Impediments to investment include inadequate infrastructure, corruption, an inefficient system of registering property, an inconsistent regulatory environment, misguided macroeconomic policies, and slow and ineffective courts and dispute resolution mechanisms.

To succeed, investors must understand the Nigerian business environment and engage in problem solving with local staff, Nigerian partners and officials. Potential investors must devise means of coping with poorly maintained infrastructure and arbitrary policy changes. Security is of special concern. Inadequate law enforcement compounds the country's high crime rate, and sporadic outbreaks of ethnic and religious violence continue.

Military rule ended with the May 1999 inauguration of President Olusegun Obasanjo, leader of the dominant People's Democratic Party. Obasanjo won a second term in Nigeria's largely peaceful April 2003 elections, but members of the opposition and international and domestic observers cited significant electoral malpractice in some parts of the country.

The GON embarked on a reform program in late 2003 christened the National Economic Empowerment and Development Strategy (NEEDS), which attempts to address many of the problems caused by mismanagement and bad governance under years of military rule. Freedom of expression and of the press is observed, and human rights violations have been reduced. Controls over foreign investment have been loosened, and earlier decrees inhibiting competition or conferring monopoly powers on public enterprises have been repealed or amended. Despite these actions, policymakers' protectionist bent remains evident. Trade policy is inconsistent, and the GON prohibits the importation of many goods, ostensibly to foster domestic production.

Openness to Foreign Investment

Since its inception in 1999, the Obasanjo administration has been soliciting foreign investment. President Obasanjo has traveled around the globe in pursuit of foreign investment.

Legal Framework: With a few exceptions, the Nigerian Investment Promotion Commission (NIPC) Decree of 1995 allows 100 percent foreign ownership of firms outside the petroleum sector, where investment is limited to existing joint ventures or new production-sharing agreements. Industries considered crucial to national security, such as firearms, ammunition, and military and paramilitary apparel, are reserved for domestic investors. Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree prohibits the nationalization or expropriation of foreign enterprises except in cases of national interest.

Nigerian laws apply equally to domestic and foreign investors. These include the Securities and Exchange Act of 1999, the Foreign Exchange Act of 1995, the Money Laundering Act of 2003, the Banking and Other Financial Institutions Act of 1991, and the National Office of Technology Acquisition and Promotion Act of 1979.

Privatization: Ththe Privatization and Commercialization Act of 1999 established both the National Council on Privatization, the policymaking body overseeing the privatization of state-owned enterprises, and the Bureau of Public Enterprises (BPE), the body responsible for implementing the program. The privatization of key sectors, including telecommunications and power, calls for core investors to acquire controlling shares in formerly state-owned enterprises. To make the privatization program effective, the GON repealed or amended decrees that inhibited competition or conferred monopoly powers on parastatal firms. Since 1999, the BPE has raised nearly

$500 million by privatizing more than 30 enterprises, including cement manufacturing firms, banks, hotels, and vehicle assembly plants. The BPE has failed, however, in its attempts to privatize the NICON Hilton Hotel and Nigerian Telecommunications Limited (NITEL). Legislation that would provide a legal basis for privatization in some key sectors has yet to pass the National Assembly, though there are prospects for enactment in 2005. An example is the Power Sector Reform Bill that would open the power sector to competition, thereby ending the monopoly of the government-owned National Electric Power Authority (NEPA).

The GON has substantially opened Nigeria's telecommunications sector. The Telecommunications Act of 2001 abolished requirements for standard mobile technologies and authorized the Nigerian Communications Commission (NCC) to issue licenses to existing and prospective service providers, effectively ending NITEL's monopoly over telecommunications services. In early 2001, the NCC auctioned off GSM licenses, an effort that received commendation both in local and international circles for its transparency. Four enterprises, including NITEL, won licenses. Globacom won mobile, fixed, and international gateway licenses as Nigeria's second national operator in mid-2002. According to the NCC, the estimated total number of phone lines (both mobile and fixed line) in Nigeria at the end of 2004 was 9 million, and plans were underway for a total of 20 million lines by the end of 2005.

Deregulation of the telecommunications sector has led to the issuance of licenses for fixed wireless networks, internet services, and VSAT (very small aperture terminal) satellite telecommunications equipment services. The GON's hefty fees and opaque contract bidding procedures tend to slow the spread of these technologies, however.

A GON attempt to privatize NITEL in late 2001 stalled when the winning bidder failed to meet payment deadlines. When the reserve bidder declined to negotiate a contract, the GON chose not to move forward with NITEL's privatization. Instead the GON instructed the BPE to solicit expressions of interest for a three-year management contract. The GON selected Pentascope International, a Dutch telecommunications consortium, to manage NITEL until 2006. The agreement requires Pentascope to supply 600,000 new fixed lines (to bring total installed capacity to 1.3 million lines) and 1.2 million new mobile lines, up from about 120,000 now. The GON will again try to privatize NITEL in 2005 by selling at least 51 percent of NITEL shares at the end of Pentascope's management contract. Pentascope has been performing below the agreed benchmarks of the management contract signed in 2003.

The privatization of Nigeria's National Electric Power Authority (NEPA) has moved slowly. Given the complex nature of the sale, NEPA's poor financial condition, and strong public opposition, privatization will likely be difficult. NEPA is moving slowly to restructure its services into autonomous firms encompassing power generation, transmission, distribution, and billing.

Conversion and Transfer Policies

The Foreign Exchange Monitoring Decree of 1995 opened Nigeria's foreign exchange market. The Interbank Foreign Exchange Market (IFEM), established in 1999, was replaced in July 2002 by a modified Dutch Auction System (DAS) that tied officially traded naira to a controlled market mechanism, thereby reducing the discount between the official and parallel markets to between five and eight percent by the end of 2004. Earlier spreads of 17 to 20 percent had diverted an inordinate amount of banking activity to foreign exchange arbitrage.

Foreign companies and individuals can hold domiciliary accounts in banks. Account holders have unlimited use of their funds, and foreign investors are allowed unfettered entry and exit of capital. On a day-to-day basis, however, banks often lack sufficient foreign exchange. In 2002, in an attempt to reduce demand for foreign exchange, the Central Bank reduced the $10,000 per person Personal Travel Allowance to $4,000 and reduced the Business Travel Allowance to $10,000. Officially, foreign exchange for travel must be issued in traveler's checks by commercial banks. Persons may obtain less foreign exchange in a single transaction and travelers checks from registered bureaux de change.

The NIPC guarantees investors unrestricted transfer of dividends (net a 10 percent withholding tax). Companies must provide evidence of income earned and taxes paid before making remittances. Money transfers usually take less than two weeks. All transfers are required by law to be made through banks, because banks are the only licensed foreign exchange agents.

Expropriation and Compensation
The GON has not expropriated or nationalized foreign assets since the late seventies.

Dispute Settlement

Investment Disputes: Nigeria's civil courts handle disputes between corporate bodies and the GON as well as between Nigerian businesses and foreign investors. Court decisions occasionally go against the GON. Nigerian law allows the enforcement of foreign judgments after proper hearings in Nigerian courts. Plaintiffs receive monetary judgments in the currency specified in their claims.
Legal System: Nigeria has a complex three-tiered legal system comprised of English common law, Islamic law, and customary law. Most business transactions are governed by common law as modified by statutes to meet local demands and conditions. At the pinnacle of the judicial system is the Supreme Court, which has original and appellate jurisdiction in specific constitutional, civil, and criminal matters as prescribed by Nigeria's constitution. The Federal High Court has jurisdiction over revenue matters, admiralty law, banking, foreign exchange, other currency and monetary or fiscal matters, and lawsuits to which the federal government or any of its agencies are party. Debtors and creditors rarely have recourse to Nigeria's pre-independence bankruptcy law. In the Nigerian business culture, businessmen generally do not seek bankruptcy protection. Even in cases where creditors obtain a judgment against defendants, claims often go unpaid.

Since 1999, the application of the rule of law has improved. The public is less reluctant to resort to the court system and more willing to litigate and seek redress without fear of reprisal. However, use of the courts does not automatically imply fair or impartial judgments. The Nigerian court system was recently classified by the World Bank's publication, Doing Business in 2005, as the eighth slowest country to enforce contracts, out of one hundred and forty-five countries surveyed. The report revealed that contract enforcement required 23 procedures and 730 days, the cost of which averaged 37.2 percent of the value of the contract. The Nigerian court system has too few court facilities, lacks computerized document processing systems, and poorly remunerates judges and other court officials, all of which encourage corruption and undermine enforcement.

Alternative Dispute Resolution: The GON promulgated the Arbitration and Conciliation Act of 1988 (the Arbitration Act) that provides for a unified and straightforward legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation. The Act established internationally competitive arbitration mechanisms and fixed proceeding schedules, provided for the application of the UNCITRAL (United Nations Commission on International Trade Law) arbitration rules or any other international arbitration rule acceptable to the parties, and made the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) applicable to contract enforcement, based on reciprocity. The Act allows parties to challenge arbitrators and provides that an arbitration tribunal shall ensure that the parties are accorded equal treatment, and that each party has full opportunity to present its case.

Performance Requirements/Incentives

Nigeria regulates investment in line with the World Trade Organization's Trade-Related Investment Measures Agreement. Foreign companies operate successfully in Nigeria's service sector, including telecommunications, accounting, insurance, banking, and advertising. The Securities and Exchange Act of 1988, amended in 1999 and renamed the Investment and Securities Act, forbids monopolies, insider trading, and unfair practices in securities dealings.

To meet performance requirements, foreign investors must register with the Nigerian Investment Promotion Commission, incorporate as a limited liability company (private or public) with the Corporate Affairs Commission, procure appropriate business permits, and (when applicable) register with the Securities and Exchange Commission. Manufacturing companies are sometimes required to meet local content requirements. Expatriate personnel do not require work permits, but they are subject to "needs quotas" requiring them to obtain residence permits that allow salary remittances abroad. Larger quotas are allowed for professions deemed in short supply, such as deepwater oilfield divers. U.S. companies often report problems obtaining quota permits.

The GON maintains many different and overlapping incentive schemes. The Industrial Development/Income Tax Relief Act No. 22 of 1971, amended in 1988, provides incentives to pioneer industries deemed beneficial to Nigeria's economic development and to labor-intensive industries, such as

apparel. Companies that receive pioneer status may benefit from a nonrenewable 100 percent tax holiday of five years (seven years if the company is located in an economically disadvantaged area). Industries that achieve minimum local raw materials utilization of 60 to 80 percent may benefit from a 30 percent tax concession for five years, and investments employing labor-intensive modes of production may enjoy a 15 percent tax concession for five years. Additional incentives exist for the natural gas sector, including allowances for capital investments and tax-deductible interest on loans. The GON encourages foreign investment in agriculture, mining and mineral extraction (non-oil), oil and gas, and the export sector. In practice, these incentive programs meet with varying degrees of success.

Technology Transfer Requirements: The National Office of Industrial Property Act of 1979 established the National Office of Technology Acquisition and Promotion (NOTAP) to facilitate the acquisition, development, and promotion of foreign and indigenous technologies. NOTAP registers commercial contracts and agreements dealing with the transfer of foreign technology and ensures that investors possess licenses to use trademarks and patented inventions and meet other requirements before sending remittances abroad. With the Ministry of Finance, NOTAP administers 120 percent tax deductions for research and development expenses if carried out in Nigeria and 140 percent deductions for research and development using local raw materials.

NOTAP recently shifted its focus from regulatory control and technology transfer to promotion and development, although the law establishing NOTAP has not changed. With the assistance of the World Intellectual Property Organization, NOTAP has established a patent information and documentation center for the dissemination of technology information to end-users. The office has a mandate to commercialize institutional research and development with industry. Unfortunately, following decades of neglect, most Nigerian research and development institutions operate far below optimal capacity.

Import Policies: Tariffs provide the Government of Nigeria (GON) its (distant) second largest source of revenue after oil exports. But frequent policy changes and uneven duty collection make importing difficult and expensive and create severe bottlenecks. Nigeria's dependence on imports aggravates the situation. In its last major tariff revision in March 2003, the GON cut duties on 230 line items (mostly raw materials, base metals, and capital equipment) but raised tariffs on 30 others (largely plastic, rubber, and aluminum articles). Most increases were relatively small. The GON had announced similar cuts and increases in 2001 and ¶2002. The GON announced in late 2004 that it will harmonize its tariff structure with the ECOWAS band of tariffs by the end of June 2005.

Bans prohibit the import of about 60 specific goods including meat, fresh fruit, cassava, pasta, fruit juice in retail packs, toothpicks, soaps and detergents, textiles, plastics, and barite. The GON banned 41 items in January ¶2004. The GON announced in late 2004 that it will phase out the bans by January 2007.

The Nigeria Customs Service (NCS) and the Nigerian Ports Authority (NPA) have exclusive jurisdiction over customs services and port operations. Nigerian customs regulations and tariffs are set forth in the Customs, Excise, and Tariff (Consolidation) Decree No. 4 of 1995. Nigerian law allows importers to clear goods on their own, but most importers employ clearing and forwarding agents. Pre-shipment inspection (PSI) must be completed for all imports except those destined for free trade zones.

In 2001 and again in 2003, Nigeria reduced its port taxes/levies and removed certain administrative obstacles that hampered efficient operations, reducing the number of security agencies stationed at the ports from over fifteen to just five. The NCS announced plans to computerize its Lagos offices, and the NPA promised to begin clearing imports within 48 hours.

Many importers under-invoice shipments and engage in currency arbitrage to minimize tariffs and lower their landed costs. Others ship their goods to ports in neighboring countries, after which they are transported overland. The NCS stepped up enforcement of its 100 percent physical inspection policy in 2001 in an attempt to check these practices, but officials admit they do not have the resources to inspect every incoming container. Officials conduct spot checks on samples from most containers and profile importers for likely violations. The NCS levies a 50 percent surcharge on undeclared imports to penalize intentional duty evasion.

In 2002 and again in 2003, the GON announced plans to

replace its pre-shipment inspection regime with a regime mandating 100 percent destination inspections at Nigerian ports of entry. The proposed change was twice deferred amid doubts about officials' ability to implement it. Importers feared corruption would increase if the Nigerian Customs Service had sole purview over goods' classification and valuation. . Many major shippers prefer pre-shipment inspection because it provides them with official documentation to refute charges of overvaluation or inappropriately classified goods. In October 2004, President Obasanjo announced the GON's resolve to commence destination inspection in 2005. The GON plans to announce a timetable for implementation of the scheme in 2005.

Shippers report that efforts to modernize and professionalize the NCS and the NPA have reduced port congestion and clearance times, particularly at Lagos' Apapa Port, which handles over 40 percent of Nigeria's trade. This is particularly the case for container traffic. Nevertheless, bribery of customs and port officials remains commonplace, and smuggled goods routinely enter Nigeria's seaports and cross its land borders.

Export Incentives: Investors registered with the Nigerian Export Promotion Council (NEPC) may benefit from certain export incentives. A duty drawback scheme provides a 60 percent refund to qualified importers, and an export development fund provides financial assistance to private exporters for expenses related to export promotion. Companies exporting at least 60 percent of their product may benefit from a 10 percent tax concession for five years. A manufacture-in-bond scheme allows manufacturers that submit bonds for 110 percent of the value of duties assessed to import raw materials, intermediate products and machinery, other equipment, and spare parts duty-free. The GON provides capital asset depreciation allowances of five percent on plant and machinery to manufacturers exporting at least 50 percent of their annual turnover if their products have at least 40 percent local raw materials content or 35 percent value added. An export grant funding scheme provides cash incentives for exporters who have exported a minimum of N50,000 ($375) of semi-manufactured products. The Central Bank allows exporters to retain foreign currency export proceeds. In practice, however, these programs benefit few individuals and businesses.

Although highly underutilized, the Nigerian Export-Import Bank provides commercial bank guarantees and direct lending to facilitate export sector growth. The bank's Foreign Input Facility provides normal commercial terms of three to five years (or longer) for the importation of machinery and raw materials used for generating exports.

While these agencies are meant to promote industrial exports, they remain burdened by uneven management, vaguely defined policy guidelines, and corruption. Nigeria's overvalued currency also leaves exporters at a disadvantage.

Government Procurement: The GON awards contracts under an open-tender system, advertising tenders in Nigerian newspapers and opening them to domestic and foreign companies. Procurement has gradually become more transparent, but corruption persists.

Procurement for capital projects is often subject to over-invoicing, which permits improper payments to private and public sector officials. Many U.S. companies claim they are disadvantaged in obtaining GON contracts, even when they appear to have the best bids in technical and financial terms. Unsuccessful U.S. bidders sometimes allege collusion between foreign competitors and key GON officials.

In January 2001, the GON issued new procurement and contracting guidelines clarifying competitive tendering and decision-making procedures, defining bid security and mobilization fee rules, and providing for audits of capital projects. The GON then established the Budget Monitoring and Price Intelligence Unit (BMPIU) to act as a clearinghouse for government contracts and procurement, and to monitor the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurements above N50 million (about $380,000) are subject to full "due process," as the process is called, by the BMPIU. The GON has submitted public procurement legislation to the National Assembly to reorganize the BMPIU as a Bureau of Public Procurement. This act would require similar legislation to be enacted and procurement offices to be created by the state and local governments.

Visa Requirements: Investors sometimes encounter difficulties acquiring entry visas and residency permits. Foreigners must obtain entry visas from Nigerian embassies or consulates abroad, seek expatriate position authorization from the Nigerian Investment Promotion Commission, and request residency permits from the Nigerian Immigration Service. Investors report that this cumbersome process can

take from two to 24 months and cost from $1,000 to $3,000 in facilitation fees.

Right to Private Ownership and Establishment

In accordance with the NIPC Decree of 1995, the GON supports competitive business practices and protects private property.

Protection of Property Rights

The GON recognizes secured interests in property, such as mortgages. The recording of security instruments and their enforcement are subject to the same inefficiencies as those in the judicial system. The World Bank's publication, Doing Business in 2005, which surveyed 145 countries including Nigeria, revealed that Nigeria has the least efficient system for registering property, requiring 21 procedures and 274 days, at a cost of 27.2 percent of the property value.

Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention, the Berne Convention, and the Paris Convention (Lisbon text). The Patents and Design Decree of 1970 governs the registration of patents, and the Standards Organization of Nigeria is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent conveys an exclusive right to make, import, sell, or use a product or apply a process. The Trademarks Act of 1965 gives trademark holders exclusive rights to use registered trademarks for a specific product or class of products. The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, makes it a crime to export, import, reproduce, exhibit, perform, or sell any work without the permission of the copyright owner. Nigeria's copyright statutes also include the National Film and Video Censors Board Act and the Nigerian Film Policy Law of 1993.

In 1999, amendments to the Copyright Decree incorporated trade-related aspects of international property rights (TRIPS) protection for copyrights, except provisions to protect geographical indications and undisclosed business information. The amendment also gave the Nigerian Copyright Commission (NCC) additional enforcement powers.

Four TRIPS-related bills and amendments are in various stages of preparation, but none has been forwarded to the National Assembly. The bills would establish an Intellectual Property Commission, amend the Patents and Design Decree to make comprehensive provisions for the registration and proprietorship of patents and designs, amend the Trademarks Act to improve existing legislation relating to the recording, publishing, and enforcement of trademarks, and provide protection for plant varieties (including biotechnology) and animal breeds.

The GON has signed the WIPO Internet treaties but has yet to ratify the treaties. The NCC claims, however, that it is already implementing the terms of the treaties.

Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. A key deficiency is inadequate appreciation of the benefits of IPR protection among regulatory officials, distributor networks, and consumers. The over-stretched and under-trained Nigerian police have little understanding of intellectual property rights. The Nigeria Customs Service has received some WIPO-sponsored training, but officers who identify pirated imports are not allowed to impound offending materials unless the copyright owner has filed a complaint against a particular shipment, which happens rarely.
Companies do not often seek trademark or patent protection, the enforcement mechanisms of which they consider ineffective. Nonetheless, recent efforts to curtail abuse have yielded results. The Nigerian police and the NCC have raided enterprises producing and selling pirated software and videos, and a number of businesses have filed high-profile charges against IPR violators. In June 2004 in Lagos, duplicating equipment worth over $5 million was seized. Microsoft reported successful raids in 2002, and a bank using its software illegally was forced to buy an appropriate license.

Most raids involving copyright, patent, or trademark infringement appear to target small rather than large and well-connected pirates. Very few cases have been successfully prosecuted. Most cases are settled out of court, if at all. Those adjudicated in court are handled primarily by the Federal High Court, whose judges are generally broadly familiar with intellectual property rights law.

Transparency of the Regulatory System

Nigeria's legal, accounting, and regulatory systems are consistent with international norms, but enforcement is uneven. Since 1999, opportunities for public comment and input into proposed regulations have increased.

Professional organizations set standards for the provision of professional services: e.g., accounting, law, medicine, engineering, and advertising. These standards are usually consistent with international norms. No legal barriers prevent entry into business.

Taxation: In general, Nigeria's tax laws do not impede investment, but the imposition and administration of taxes is highly uneven and lacks transparency. Tax evasion is common, and individuals and businesses often collude with relevant officials to avoid paying taxes. Nigeria has signed double taxation agreements with several countries, including Great Britain, France, the Philippines and Japan. The GON imposes a 7.5 percent tax rate on dividends, interest, rent, and royalties when paid to a bona-fide beneficiary under a tax treaty.

Multiple taxes are a problem for businesses at state and local levels. Companies within concurrent state and local jurisdictions may be expected to pay several taxes and levies.

Efficient Capital Markets and Portfolio Investment

The Nigerian Investment Promotion Commission Decree of 1995 liberalized Nigeria's foreign investment regime, which has facilitated access to credit instruments provided by financial institutions. Foreign investors who have incorporated their companies in Nigeria have equal access to all financial instruments. Many investors consider the capital market, specifically the Nigerian Stock Exchange (NSE), a financing option, given commercial banks' high lending rates and short maturities of debt instruments. Despite restrictions on interest rates that banks agreed to in November 2002, commercial interest rates often exceed 20 percent when fees and charges are included, and most loans are granted for no more than 360 days.

Trading on the NSE remained buoyant in 2004.. The exchange operates six branches nationwide, and the volume of shares traded and market capitalization continue to rise. The GON's divestment of equity in parastatal companies as well as initial public offerings (IPOs) and issuances of additional shares by listed companies have contributed to the exchange's growth. The NSE continues to expand its membership and investor pool. Some 207 enterprises are listed on the exchange.

Government debt instruments are available. Unlike federal government instruments of short and medium maturity, instruments of state governments are often considered high risk because of their historically poor performance.

Banking System: Eighty-nine commercial banks operate in Nigeria. The introduction of universal banking practices in December 2000 allowed banks to expand their services.

Health of the Banking System: Capital concentration is significant, as Nigeria's 16 largest commercial banks held about 60 percent of the total industry assets, while the 5 largest banks controlled about 40 percent of the industry's deposits in 2004. The Central Bank of Nigeria's initial 2004 assessment of the banking industry revealed that 62 of Nigeria's 89 commercial banks were sound and satisfactory, 14 marginal, 11 unsound, and two that could not be assessed because they had not rendered returns for the period. In 2003, the Nigerian Deposit Insurance Corporation had reported that the industry's non-performing loans equaled 21.6 percent of total loans granted in 2003.

Following its early 2004 assessment, the CBN embarked on a reform of the banking system. On July 6, 2004 the CBN announced a fourteen-point reform program for the banking industry. The cardinal point of the reform program is the new minimum capital requirement of N25 billion ($190 million) that all commercial banks must meet by December 31, ¶2005. Although the new capital requirement is expected to lead to consolidation in the industry in the form of mergers and acquisitions, most banks are recapitalizing through the public sale of shares and private placements. The Investment and Securities Act (1999) provides for mergers and acquisitions.

Political Violence

Social unrest, religious and ethnic strife, and crime affect many parts of Nigeria. In the oil-rich Niger Delta, decades of official neglect, persistent poverty, as well as dislocations and environmental damage caused by energy projects have aggravated socioeconomic unrest. Sabotage and vandalism of pipelines and other installations and

kidnapping of Nigerian and expatriate oil workers are regular occurrences. Many of these criminal activities are designed to extort cash from foreign operators.

The Niger Delta Development Commission (NDDC) has a mandate to implement social and economic development projects in the Delta region, but the NDDC has been feckless. State and local governments offer few social services. Niger Delta residents continue to seek direct payments and other assistance from oil companies. Some have implemented their own socioeconomic development programs to assist local communities, but many communities consider the company programs inadequate.

Nigeria continues to experience religious and communal violence. In November 2002, riots sparked by an editorial regarding the Miss World pageant left more than 200 dead in Kaduna. Violence in the North-eastern state of Adamawa resulted in about 100 deaths in the first half of 2003, and sporadic ethno-religious violence in Plateau State resulted in several hundred deaths and the declaration of martial law in early 2004. The advent of vigilante groups in various parts of the country has exacerbated violence.

Corruption

Domestic and foreign observers recognize corruption as a serious obstacle to economic growth and poverty reduction. Nigeria was third only to Bangladesh and Haiti in Transparency International's 2004 Corruption Perceptions Index.

The Corrupt Practices and Other Related Offences Act of 2001 established an Independent Corrupt Practices and Other Related Offences Commission (ICPC) to prosecute individuals, government officials, and businesses accused of corruption. Over 19 offenses are punishable under the Act, including accepting or giving gratification, fraudulent acquisition of property, and concealment of fraud. Nigerian law stipulates that giving and receiving bribes are criminal offences and, as such, are not tax deductible. Despite the new legislation, few people have been indicted, and corruption remains endemic.

The Economic and Financial Crimes Commission was established also to prosecute individuals involved in financial crimes and other acts of economic sabotage. The EFCC now has over 500 individuals in custody and about50 cases in court, but it has achieved only one conviction.

Nigeria is a pilot participant in the Extractive Industry Transparency Initiative, which will help ensure audits of Nigeria's oil accounts.

Nigeria is a signatory to the UN Anticorruption Convention, but has yet to ratify it.

Bilateral Investment Agreements

Investment Agreements: While a Trade and Investment Framework Agreement (TIFA) has been signed with the United States, a bilateral investment treaty is not in place. Nigeria has bilateral investment agreements with the United Kingdom, Germany, Belgium, South Africa, Italy, Argentina, Egypt, South Korea, China, Jamaica, Sweden, Switzerland, Turkey, Uganda, and Romania.

Investment Insurance Programs

In 2002, Nigeria put into effect a 1999 agreement allowing the U.S. Overseas Private Investment Corporation to offer all its products to U.S. investors in Nigeria.

Labor

Over the past decade, Nigeria's skilled labor pool has declined as vocational and university educational standards have plummeted, mainly because of poor funding. Given the low employment capacity of Nigeria's formal sector, nearly half of all Nigerians are unemployed or underemployed and rely on the informal sector as a means of support. In the formal sector, companies involved in businesses such as banking and insurance possess an adequately skilled workforce (often trained abroad, in private institutions, or at the better-funded universities). In the manufacturing sector, workers often require additional training and supervision, but there are too few supervisory personnel to ensure that this is done well. . Labor-management relations in some sectors, especially in the country's profitable oil and gas industries, are strained.

The Right of Association: Nigeria's Constitution guarantees the rights of free assembly and association and protects workers' rights to form or belong to trade unions. Several statutory laws nonetheless restrict the rights of workers to

associate or disassociate with labor organizations. Since the establishment of the single trade federation system in 1978, non-management senior staff have been prohibited from joining government-recognized trade unions. Although the Trade Union Congress and the Congress of Free Trade Unions are regarded as influential labor federations, the two senior staff associations are denied seats on Nigeria's National Labor Advisory Council (NLAC). A GON bill to amend the law is working its way through the National Assembly.

Nigeria's single central labor federation, the Nigeria Labour Congress (NLC), comprises twenty-nine industrial unions. According to figures provided by the NLC, total union membership at the end of 2002 was about 4 million. Less than 10 percent of the total work force is unionized, and except for a few workers engaged in commercial food processing, those in the agricultural sector, which employs the bulk of the work force, are not organized.

Collective Bargaining: Collective bargaining occurred throughout the public sector and the organized private sector in 2002 and 2003, but public sector employees have become increasingly concerned about the GON's commitment to the collective bargaining process in resolving conflicts. According to the NLC, the GON's failure to implement agreements threatens to "devalue the enviable record of dialogue, consultation, and mutual trust that has characterized the relationship between Federal Government and the NLC since 1999."

Collective bargaining in the petroleum industry is relatively efficient compared to that in other sectors. Except for a longstanding unresolved dispute over the industry's use of contract labor, issues pertaining to salaries, benefits, health and safety, and working conditions tend generally to be resolved quickly through negotiations. However, organized labor's efforts to address broad political issues, however, have resulted in industrial actions, such as general strikes over fuel prices that continue to affect industry productivity.

Workers under collective bargaining agreements cannot participate in strikes unless their unions comply with the requirements of the law, which includes provisions for mandatory mediation and referral of disputes to the GON. The law provides the GON the option of referring matters to a labor conciliator, an arbitration panel, a board of inquiry, or the National Industrial Court (NIC). Although the law forbids employers from granting general wage increases to workers without prior government approval, the law is not often enforced. Strikes in both the private and public sectors nonetheless often occur.
The Nigerian labor minister may refer unresolved disputes to the Industrial Arbitration Panel (IAP) and the NIC. Union officials question the effectiveness and independence of the NIC in view of its refusal to resolve disputes stemming from the GON's failure to fulfill contract provisions for public sector employees. The NIC was reconstituted in 2001. Several new members were added including a formerly imprisoned trade unionist, Milton Dabibi, but union leaders continue to criticize the arbitration system's dependence on the labor minister's referrals.

Child Labor: Nigeria has ratified the International Labor Organization (ILO) convention on the elimination of the worst forms of child labor. The 1974 Labor Decree and the 1979 Constitution prohibit forced or compulsory labor and restrict the employment of children under the age of 15 to home-based agricultural or domestic work for no more than eight hours per day. The Decree allows the apprenticeship of youths as of the age of 13 under specific conditions.

Despite this, Nigeria's weak economy has forced many children into commercial activities to enhance family income. The ILO estimates that about 12 million children between the ages of 10 and 14 (25 percent of all Nigerian children) were employed in some capacity in 2002, often as beggars, hawkers, or domestic servants.

Acceptable Conditions of Work: Nigeria's 1974 Labor Decree provides for a 40-hour workweek, two to four weeks of annual leave, and overtime and holiday pay for all workers except agricultural and domestic. No law prohibits compulsory overtime. The Decree establishes general health and safety provisions, some of which are specific to young or female workers, and requires the factory division of the Ministry of Labor and Employment to inspect factories for compliance with health and safety standards. Under-funding and limited resources undermine the agency's oversight capacity, and construction sites and other non-factory work sites are often ignored. Nigeria's labor law requires employers to compensate injured workers and dependent survivors of laborers killed in industrial accidents, but the Labor Ministry has been ineffective in identifying violators and has failed to implement ILO recommendations to update its inspection program and reporting of accidents.

Foreign Trade Zones/Free Ports

To attract export-oriented investment, the GON established the Nigerian Export Processing Zone Authority (NEPZA) in ¶1992. NEPZA allows duty-free import of all equipment and raw materials into its zones. Up to 25 percent of production in an export processing zone may be sold domestically upon payment of applicable duties. Investors in the zones are exempt from foreign exchange regulations and taxes and may freely repatriate capital.

Of the five export processing zones established under NEPZA, just two, in Calabar and Onne, function properly. In 2001, both were converted into free trade zones, thereby freeing them from the export requirement. As a result, investment is quickly moving into Calabar, almost exclusively in industries that add value to Nigerian imports. Only one firm in Calabar appears to be exporting in a consistent fashion. Oil and gas companies use the Onne free port zone as a bonded warehouse for supplies and equipment and for the export of liquefied natural gas.

Foreign Direct Investment

In 2003, the stock of foreign direct investment (FDI) in Nigeria was estimated at $24 billion, which accounted for about 43 percent of GDP. Total FDI Inflow was $1.2 billion in 2003 and accounted for 36 percent of gross fixed capital formation. The stock of U.S. FDI in Nigeria totaled $2.1 billion in 2003, up from $1.8 billion the year before. Most FDI is concentrated in the oil and gas sector. Oil companies report that much FDI continues to fund oil and gas exploration and production, liquefied natural gas projects, and related activities. Some FDI is channeled into telecommunications and manufacturing, but the total remains small relative to oil sector investment.

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